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6 **UNITED STATES DISTRICT COURT**
 7 **DISTRICT OF NEVADA**

8 BOARD OF TRUSTEES OF THE
 9 EMPLOYEE PAINTERS' TRUST, et al.,

CASE NO.: 2:24-cv-01023-APG-NJK

10 Plaintiffs,
 vs.
 11 OLYMPUS CONSTRUCTION LV, INC., et
 12 Defendants.

**PLAINTIFFS' REPLY IN
SUPPORT OF MOTION
TO STRIKE DEFENSES**

13 The trustees of the Employee Painters' Trust, et al. ("Plaintiffs" "Trusts" or "Plans"),
 14 hereby reply in support of their Motion to Strike Defenses [ECF No. 18].

15 **I. INTRODUCTION / PROCEDURAL HISTORY**

16 Plaintiffs' Motion made numerous arguments and offered various reasons to strike
 17 Defendants' boilerplate affirmative defenses. Plaintiffs' primary argument hinges on 29 U.S.C.
 18 § 1145 ("MPPAA" or "section 515 of ERISA"), which rendered all but two affirmative
 19 defenses to an ERISA collection action—illegality and fraud in the execution—legally
 20 insufficient. *MacKillop v. Lowe's Market, Inc.*, 58 F.3d 1441, 1443-44 (9th Cir. 1995). The
 21 MPPAA restricted the availability of defenses specifically "to simplify trust fund collection
 22 actions." *Southwest Adm'rs, Inc. v. Rozay's Transfer*, 791 F.2d 769, 773 (9th Cir. 1986).

23 Defendants do not dispute any of this. In fact, neither the *MacKillop* case nor the word
 24 "abolish" are mentioned in the Opposition [ECF No. 25] or Joinder [ECF No. 27].¹ In the

25 ¹ The affirmative defenses listed by Great American are not identical to those of the other
 26 Defendants. Great American's Joinder may therefore be legally defective, in whole or part. See
 27 *United States v. Cerna*, No. CR-08-0730 WHA, 2011 U.S. Dist. LEXIS 12893, 2011 WL

1 Opposition, Defendants discuss motions to strike defenses only in a general sense, with
 2 essentially zero discussion of the impact of the MPPAA, which Defendants' deigned to
 3 mention only to acknowledge the elements of Plaintiffs' primary ERISA claims. Also missing
 4 from the Opposition are responses to many arguments relating to specific defenses or groups of
 5 defenses. For example, Defendants failed to respond to Plaintiffs' arguments regarding the
 6 failed attempt by HRS to plead a fraud in the execution defense (the defense is invalid because
 7 it was pleaded without the particularity required by Fed. R. Civ. P. 9(b), and because
 8 Defendants' Answers confirm that HRS understood it was executing a collective bargaining
 9 agreement). Just as the Defendants waived the defense of illegality by failing to plead it, by
 10 failing to respond to defense-specific arguments made by the Plaintiffs, the Defendants
 11 conceded in their Opposition that most of the defenses included in the boilerplate lists
 12 (including fraud in the execution) should be stricken.

13 In the Opposition, Defendants discussed legal standards generally,² but then focused on
 14 attempting to save a small list of so-called defenses. *See* ECF No. 25 at 9:14-18 and 10:19–
 15 11:17, where they argue that the following defenses should survive the Motion to Strike:

- 16 - Failure to state a claim on which relief can be granted (No. 1)³
 17 - Estoppel (No. 2)
 18 - Laches (No. 3)

19 500229, at *12 (N.D. Cal. Feb. 9, 2011) (motion to join should not “leave the [court] guessing
 20 as to the reasons why the motions sought to be joined apply”); *United States v. Harris*, 932
 F.2d 1529, 1533 (5th Cir. 1991) (under Fed. R. App. P. 28(i), arguments adopted must be
 “equally applicable” to both the party making them and the party who joins in them).

21 ² It is noteworthy that in discussing the legal standard for motions to strike defenses the
 22 Defendants chose not to grapple with the MPPAA or other issues raised in Section II.B. of
 23 Plaintiffs' Motion to Strike Defenses. Defendants cite *Banks v. Trans Union, LLC*, No. 2:21-cv-
 01580-CDS-EJY, 2024 BL 225387, at *2 (D. Nev. July 02, 2024) and argue, “If the court finds
 24 ‘any doubt whether the portion to be stricken might bear on an issue in the litigation, the court
 25 should deny the motion.’” But there can be no such doubt here because the Ninth Circuit has
 plainly held that all but two affirmative defenses were abolished by the MPPAA. Furthermore,
 the MPPAA requires consideration of issues not presented by any other type of case—
 considerations that weigh heavily in favor of the relief requested by the Plaintiffs.

26 ³ Unless otherwise stated, numbers used to refer to defenses match those found in the Western
 27 National column of the chart appearing in Plaintiffs' Motion to Strike Defenses at pgs. 2-4.
 28

- HRS's signature on the Master Agreement was secured through fraud (OCLV/Friedberg/HRS/Bower No. 4)
- Accord & satisfaction, release and waiver (No. 5)
- Unclean hands (No. 6)
- Plaintiffs' claims are barred by their own intentional acts and/or omissions (No. 7)
- Defendant complied with applicable agreements (No. 8)
- damages claimed by Plaintiffs resulted from acts or omissions of persons other than Defendant or its agent (No. 12)
- No agreement provides for contributions by Defendant as asserted by Plaintiff (No. 14)
- Defendants operated as separate and distinct entities (No. 15 for OCLV/Friedberg/HRS/Bower)
- Defendant is not an employer required to make contributions by not being a signatory to certain agreements or documents (No. 21)
- OCLV and HRS were excused from performing any contractual obligations owed to Plaintiffs (No. 22)
- OCLV and HRS fulfilled their duties under Nevada and federal law and performed all duties owed to Plaintiffs (No. 23)
- Plaintiffs breached their own contractual obligations to OCLV and/or HRS, and, as a result, Defendant is released or discharged from any obligations to Plaintiffs (No. 26)
- Plaintiffs' Complaint is barred in whole or in part because Plaintiff cannot satisfy the burden of proof as to damages (No. 34; OCLV/Friedberg No. 21)
- Plaintiffs' Complaint is barred because the audit expenses and attorney's fees and costs claimed by Plaintiffs were unreasonably incurred (No. 35; OCLV/Friedberg No. 22)

These so-called defenses may broadly be described as factual disputes: 1) related to the alter ego allegations made by the Plaintiffs; 2) claiming that OCLV and HRS performed the obligations stated in the painting and floorcovering collective bargaining agreements ("CBAs"); 3) related to what the Defendants characterize as "Plaintiffs' own actions and misconduct" generally; and 4) factual disputes stated in counterclaims alleging the Plaintiffs breached the terms of a settlement agreement entered into with HRS.

Binding precedents clearly hold that such purported defenses are not legally viable, not only because they were abolished by the MPPAA, but also because factual disputes do not qualify as affirmative defenses. Striking them from the Answers, as requested by the Plaintiffs, will not deprive the Defendants of the opportunity to present competing evidence regarding the elements of Plaintiffs' claims. But neither factual denials nor competing evidence are affirmative defenses. By granting the Motion to Strike Affirmative Defenses, the Court will simply be following binding Ninth Circuit precedent, which cannot reasonably be viewed as prejudicing the Defendants. In contrast, denying the Motion to Strike Defenses would work

1 further harm upon the Plaintiffs, who would then be required to litigate the validity of legally
 2 insufficient affirmative defenses that Congress abolished.

3 **II.**

4 **ARGUMENT**

5 **A. The Motion to Strike must be granted as to the defenses about which the**
 6 **Defendants offered no argument in their Opposition.**

7 In the Opposition, Defendants made no arguments to preserve the following defenses:

- 8 - Plaintiffs audit demand exceeds the scope of its auditing authority (No. 9)
- 9 - Plaintiffs are not entitled to recover costs, disbursements, attorney's fees, interest,
 liquidated damages, or any other penalties available under ERISA § 502(g) (No. 10)
- 10 - Plaintiffs' Complaint has been brought without reasonable ground and/or to extort,
 harass, or oppress Defendant (No. 11)
- 11 - Defendant was not the proximate cause of any damages sustained by Plaintiffs (No. 13;
 Great American No. 14)
- 12 - No claim may be made against the bond(s) for any obligation incurred by an entity not
 named as the principal on the surety bond(s) (No. 16; Great American No. 5)
- 13 - Plaintiffs' Complaint is barred in whole or in part by the statute of frauds (No. 17)
- 14 - The NLRB possesses and the Court lacks jurisdiction to hear claims regarding
 jurisdictional disputes between unions over covered work (No. 18)
- 15 - Lack of consideration to form a contract (No. 19)
- 16 - Defendant has fully performed any and all of its obligations as set forth in the bond(s)
 (No. 24; Great American No. 11)
- 17 - Plaintiffs' Complaint is barred in whole or in part because Plaintiffs are not the
 beneficiaries under the bond(s) at issue (No. 27; Great American No. 15)
- 18 - Failure to mitigate damages (No. 28)
- 19 - Plaintiffs failed to give timely notice of any breach of contract (No. 29)
- 20 - Plaintiffs have failed to satisfy conditions precedent and/or conditions subsequent
 required before bringing an action against Defendant (No. 30; Great American No. 18)
- 21 - Plaintiffs' Complaint is barred in whole or in part by the applicable statute of limitations
 (No. 31; Great American No. 21)
- 22 - Plaintiffs' Complaint is barred in whole or in part because under the doctrines of mutual
 mistake, impossibility and/or impracticability (No. 32; Great American No. 25)
- 23 - Plaintiffs' claims are subject to offset (No. 33; Great American No. 27)
- 24 - Plaintiffs' Complaint is barred in whole or in part because Plaintiff cannot satisfy the
 burden of proof as to damages (No. 34; OCLV/Friedberg No. 21; Great American No.
 28)
- 25 - Plaintiffs' Complaint is barred in whole or in part because the audit expenses and
 attorney's fees and costs claimed by Plaintiffs were unreasonably incurred (No. 35;
 OCLV/Friedberg No. 22; Great American No. 29)
- 26 - Defendant reserves its right to amend its Answer to assert any applicable, additional, or
 other defenses constituting an avoidance or affirmative defense at such time as the
 nature of Plaintiffs' claims and the facts relating to them are revealed to Defendant (No.
 36; Great American No. 31)

1 By failing to present any counterarguments regarding these defenses, Defendants have
 2 conceded that Plaintiffs' Motion to Strike them is meritorious. LR 7-2(d); *see Donor Network*
 3 W. v. Nev. *Donor Network, Inc.*, No. 3:23-cv-00632-ART-CSD, 2024 U.S. Dist. LEXIS
 4 161187, at *15 (D. Nev. Sep. 9, 2024); *Steinmetz v. Am. Honda Fin.*, 447 F. Supp. 3d 994, 1004
 5 n.3 (D. Nev. 2020). The defenses listed immediately above should therefore be stricken.

6 **B. Factual disputes are not affirmative defenses.**

7 The Defendants cannot save affirmative defenses that are really just factual disputes.
 8 "An affirmative defense is any defensive matter in the nature of a confession and avoidance. It
 9 admits that the plaintiff has a claim but asserts some legal reason why the plaintiff cannot have
 10 any recovery on that claim." *State ex rel. Plain Dealer Publ'g Co. v. City of Cleveland*, 661
 11 N.E.2d 187, 190 (Ohio 1996). *Black's Law Dictionary* (rev. 6th ed. 1990) defines "Affirmative
 12 defense" as follows: "In pleading, matter asserted by defendant which, assuming the complaint
 13 to be true, constitutes a defense to it. A response to a plaintiff's claim which attacks the
 14 plaintiff's legal right to bring an action, as opposed to attacking the truth of the claim." A
 15 factual dispute or denial is not a defense because "[t]he essence of an affirmative defense is
 16 that it assumes the plaintiff can prove its factual allegations...[but] raises additional facts or
 17 legal arguments that defeat liability nonetheless." *EEOC v. Mach Mining, LLC*, 738 F.3d 171,
 18 184 (7th Cir. 2013) (emphasis added); *see G & G Closed Circuit Events, LLC v. Nguyen*, No.
 19 10-CV-00168-LHK, 2010 U.S. Dist. LEXIS 104980, at *5 (N.D. Cal. Sep. 23, 2010)
 20 ("[D]enials of the allegations in the Complaint or allegations that the Plaintiff cannot prove the
 21 elements of his claim are not affirmative defenses.").

22 As demonstrated in the Motion, most of Defendants' affirmative defenses merely deny
 23 the allegations of the Complaint. Because factual denials are not affirmative defenses, they are
 24 "immaterial" or "impertinent" for purposes of Fed. R. Civ. P. 12(f) and should be stricken. This
 25 includes Defendants' denials of the alter ego allegations of the Complaint. Striking the factual
 26 denial non-defenses listed by the Defendants in their Answers will not lessen the burdens
 27 imposed by law on the Plaintiffs. They will still be required to prove their claims and the

1 Defendants will still be able to challenge the Plaintiffs' evidence and to present their own
 2 relevant evidence.

3 **C. Counterclaims are not affirmative defenses.**

4 Defendants argue that they have provided fair notice of their intended "defenses in
 5 their...Counterclaims." ECF No. 25 at 5:4-5. Defendants ask the Court to conflate their
 6 counterclaims (or issues raised by the counterclaims) with affirmative defenses. But
 7 counterclaims are not affirmative defenses. *See Fed. R. Civ. P. 13(c)* ("A counterclaim need not
 8 diminish or defeat the recovery sought by the opposing party [and] may request relief that
 9 exceeds in amount or differs in kind from the relief sought by the opposing party."); *FDIC v.*
 10 *F.S.S.S.*, 829 F. Supp. 317, 322 n.11 (D. Alaska 1993) ("Affirmative defenses challenge the
 11 underlying liability. Counterclaims are separate claims independent of the plaintiff's underlying
 12 claim."). Again, to the extent that their counterclaims are not dismissed, the Defendants may
 13 present evidence to support them, but neither the counterclaims nor factual issues related to
 14 counterclaims qualify as affirmative defenses.

15 **D. The Court should strike the "failure to state a claim" defense.**

16 Each of the Defendants, without further explanation, listed "failure to state a claim" as a
 17 defense. But "asserting that the complaint fails to state a claim is an argument that there is a
 18 defect in the plaintiff's prima facie case, which is not an affirmative defense." *J & J Sports*
 19 *Prods. v. Delgado*, No. 1:12-cv-001945-LJO-SKO, 2013 U.S. Dist. LEXIS 91447, at *4-5
 20 (E.D. Cal. June 28, 2013); *Barnes v. AT&T Pension Ben. Plan-Nonbargained Program*, 718 F.
 21 Supp. 2d 1167, 1174 (N.D. Cal. 2010) (striking the purported defense and ruling that failure to
 22 state a claim under Rule 12(b)(6) is more properly brought as a motion and not as an
 23 affirmative defense).

24 "Ordinarily, affirmative defenses...may not be raised on a motion to dismiss." *Petricevic*
 25 *v. Shin*, No. 20-00283 LEK-WRP, 2021 U.S. Dist. LEXIS 122014, at *10-11 (D. Haw. June 30,
 26 2021) (quoting *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1194 n.6 (9th Cir. 2018)). The fact
 27 that Rule 12(b)(6) permits a party to file a motion to dismiss for "failure to state a claim" is
 28

1 therefore a strong indication that it is not a proper “affirmative defense.” But even if this Court
 2 prefers to accept at face value that it may be asserted as a defense under Rule 12(h)(2), it still
 3 must be stricken unless it is supported by an informative factual basis that provides “fair
 4 notice” to a plaintiff. *See J & J Sports Prods.*, 2013 U.S. Dist. LEXIS 91447, at *5-6
 5 (“[A]ssuming the failure to state a claim defense is legally sufficient, the defense itself is a bare
 6 conclusion of law and provides no indication or notice to Plaintiff how the complaint fails to
 7 state a claim. As such, the defense is stricken...”). Here, the “failure to state a claim” defenses
 8 should be stricken for the same reasons.

9 **E. Alter ego allegations have no impact on motions to strike defenses.**

10 Defendants claim Plaintiffs’ alter ego allegations somehow take this case outside of the
 11 protections provided by the MPPAA. They claim that “courts have allowed affirmative
 12 defenses in ERISA contributions cases involving alter ego allegations because such defenses
 13 relate to the threshold issue of whether a defendant is legally bound by the terms of the CBA.”
 14 ECF No. 25 at 8:10-13. Defendants cite two cases for this proposition, *Painters Joint Comm. v.*
 15 *J.L. Wallco, Inc.*, No. 2:10-CV-1385 JCM (PAL), 2011 U.S. Dist. LEXIS 68614 (D. Nev. June
 16 14, 2011) (“*Wallco*”), and *Emp. Painters’ Trust v. Pac. Nw. Contractors, Inc.*, Case No. C13-
 17 05018-BHS, 2013 U.S. Dist. LEXIS 59618, 2013 WL 1774628 (W.D. Wash. Apr. 25, 2013)
 18 (“*Pac. Nw.*”).

19 *Wallco* is not persuasive because the court’s ruling—that an ERISA plaintiff must prove
 20 the elements of its claim before any defenses may be ruled out—is obviously inconsistent with
 21 the Federal Rules and subjects ERISA benefit plans to extraordinary procedures. Rule 12(f)
 22 requires motions to strike to be filed within 21 days after service, long before a plaintiff
 23 ordinarily has any opportunity to prove any aspect of its claim. This helps ensure that when
 24 legally insufficient defenses are asserted, they may promptly be rejected so that neither litigants
 25 nor courts will be forced to expend time or resources litigating the validity of “immaterial”
 26 defenses. *See Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) (“The
 27 function of a 12(f) motion to strike is to avoid the expenditure of time and money that must

1 arise from litigating spurious issues...”). *Wallco*’s suggestion that courts should artificially
 2 delay ruling on all defenses until after a case presenting alter ego issues is extensively litigated,
 3 at great expense to litigants, is contrary to Rule 1’s mandate to “secure the just, speedy, and
 4 inexpensive determination of every action and proceeding.”

5 Furthermore, *Wallco*’s insistence that a plaintiff must prove its claim before a motion to
 6 strike can properly be considered shows it misunderstood the true nature of affirmative
 7 defenses. *Wallco* assumed that a plaintiff’s alter ego allegations might not be proved, which is
 8 exactly the opposite of what was legally required. *EEOC v. Mach Mining, LLC*, 738 F.3d 171,
 9 184 (7th Cir. 2013) (“The essence of an affirmative defense is that it assumes the plaintiff can
 10 prove its factual allegations.”). A proper analysis would inexorably have led the *Wallco* court to
 11 rule differently. *See, e.g., Trs. of the Auto. Mechs. Local No. 701 Union & Indus. Pension Fund*
 12 *v. Krumpholz*, 2012 U.S. Dist. LEXIS 51945, at *6 (N.D. Ill. Apr. 13, 2012) (striking defenses
 13 which disputed whether two entities were “a single employer” because they amounted to a
 14 “denial of the allegations...of the complaint” and did not “assume the truth...of the
 15 complaint...”). The Defendants ignored *Krumpholz* in their Opposition, conceding that another
 16 of Plaintiffs’ arguments has merit. Unfortunately, the *Wallco* ruling was contrary to law
 17 because it was based on a premise that was legally incorrect, and it did not give proper effect to
 18 Congress’ mandate (the MPPAA) or to binding Ninth Circuit precedent.⁴

19 *Krumpholz* and the other case cited by the Defendants, *Pac. Nw.*, are logical, better
 20 reasoned than *Wallco*, and most importantly, consistent with Ninth Circuit precedents. When
 21 discussing *Pac. Nw.*, Defendants claimed (falsely) that the “court denied the plaintiffs’ motion
 22 to strike affirmative defenses regarding alter ego and single employer issues, stating that ‘it
 23 must first be determined that the [defendants] are legally bound by the terms of the CBA.’”

24
 25 ⁴ See *Saxena v. Martinez-Rodriguez*, No. 2:22-cv-02126-CDS-BNW, 2024 U.S. Dist. LEXIS
 26 24711, at *2 (D. Nev. Feb. 13, 2024) (“An order is contrary to law when it fails to apply or
 misapplies relevant statutes, case law, or rules of procedure.”).

1 ECF 25 at 8:17-19. The court stated that adequate proof would eventually be required to prove
 2 an alter ego relationship, but, contrary to the Defendants' argument here, that did not stop the
 3 court from striking twelve of thirteen affirmative defenses⁵ in response to an early and timely
 4 Rule 12(f)(2) motion. **The court declared, “it is not necessary for the Court to determine at**
 5 **this time that Alliance is or is not the alter ego of PNC in order to rule on the motion to**
 6 **strike the affirmative defenses.”** 2013 U.S. Dist. LEXIS 59618 at *16. The court reasoned
 7 that such a “determination could lead to only two” possibilities—either the entities were alter
 8 egos or they were not. It then explained that if the defendants were alter egos, “the Court would
 9 strike the... affirmative defenses as required by section 515 of ERISA and as set forth in the
 10 relevant case law,” but if they were not alter egos the “affirmative defenses would not apply
 11 because the... Defendants simply would not be bound by the terms of the CBA.” *Id.* Because,
 12 as the court ruled, “each outcome [led] to the same result,” the defenses the court struck⁶ were
 13 “immaterial” under Fed. R. Civ. P. 12(f) because they could have no meaningful impact on the
 14 outcome of the case. Here, just as in *Pac. Nw.* and *Krumpholz*, the alter ego allegations of the
 15 Complaint should not delay this Court from granting Plaintiffs’ Motion to Strike Defenses.

16 **F. The Court should prevent further prejudice by granting the Motion to Strike.**

17 Defendants argue, based in part on *Wallco* (distinguished above), that the Motion to
 18 Strike should be denied for lack of proof that the Plaintiffs have suffered prejudice. *Wallco*
 19 ruled that ERISA collection claimants suffer “no harm in allowing the defenses to remain in the
 20 answer until the parties have completed discovery....” 2011 U.S. Dist. LEXIS 68614, at *4. But
 21

22 ⁵ The only defense that survived in *Pac. Nw.* was “lack of privity,” which was asserted because
 23 the union party to the CBA was also a plaintiff. No union is a party to this action.

24 ⁶ See 2013 U.S. Dist. LEXIS 59618 at *16-17: “the Court strikes the following affirmative
 25 defenses as a matter of law and with no leave to amend: (1) Failure of Plaintiffs to mitigate
 26 damages; (2) Statute of Frauds; (3) Breach of contract; (4) Contributory negligence; (5) Delay
 27 by Plaintiffs/Laches; (6) Estoppel; (7) Payment; (8) Prevention of performance by Plaintiff; (9)
 Set off; (10) Unclean hands; (11) Waiver; and (12) Obligation to participate in arbitration
 and/or mediation.” This Court should do the same by disallowing any amendment related to
 defenses that the Court finds to be “insufficient” or “immaterial” as a matter of law.

1 as the Plaintiffs have repeatedly shown, they have already suffered prejudice. They are entitled
 2 to the “just, speedy, and inexpensive determination” of this Case. *See Yuga Labs, Inc. v.*
 3 *Hickman*, No. 2:23-CV-111 JCM (NJK), 2024 U.S. Dist. LEXIS 43796, at *12 (D. Nev. Feb. 1,
 4 2024) (denying a motion to set aside default judgment because to rule otherwise would have
 5 caused the plaintiff to suffer “prejudice” in the form of “more attorney’s fees as litigation
 6 continues”). Moreover, the Plaintiffs are entitled to the protections mandated by Congress in
 7 the MPPAA, which abolished all but two affirmative defenses in cases like this. *MacKillop*, 58
 8 F.3d at 1443-44. Therefore, Plaintiffs have the right to proceed without encumbrance from any
 9 affirmative defenses beyond those two. *See Tomason v. Stanley*, 297 F.R.D. 541, 545 (S.D. Ga.
 10 2014) (“...where settled law clearly forecloses an affirmative defense, courts will strike that
 11 defense.”); *Cork v. CC-Palo Alto, Inc.*, 818 F. App’x 595, 597 (9th Cir. 2020) (quoting *Spokeo,*
 12 *Inc. v. Robins*, 136 S. Ct. 1540, 1544, 1549, 194 L. Ed. 2d 635 (2016) (the violation of a right
 13 granted by statute is a form of harm or prejudice, and in some cases “a plaintiff need not allege
 14 any additional harm beyond” that which the legislature identified.).

15 If the Plaintiffs’ Motion to Strike is denied when it is due to be granted, they will suffer
 16 further harm as they will be forced to incur fees and costs to conduct discovery and to
 17 otherwise litigate the viability of numerous affirmative defenses which, as confirmed by the
 18 Ninth Circuit, were intentionally abolished by Congress. *Sidney-Vinstein*, 697 F.2d at 885
 19 (motions to strike “avoid the expenditure of time and money that must arise from litigating
 20 spurious issues...”). Given this backdrop, it is apparent that the Plaintiffs will be unduly
 21 harmed if they are denied the protections mandated by the MPPAA. The Court should ensure
 22 that Plaintiffs receive the benefit of those protections by granting the Motion to Strike.

23 **G. Plaintiffs are entitled to the relief sought.**

24 In briefing the Motion to Strike Defenses, the Parties have essentially asked the Court to
 25 choose between two points of view: 1) Although courts have discretion to “strike from a
 26 pleading an insufficient defense” under Rule 12(f), Defendants highlight the fact that motions
 27 to strike are generally disfavored. *See Dillon v. Corr. Corp. of Am.*, No. 2:20-cv-02319-APG-

1 NJK, 2021 U.S. Dist. LEXIS 272388, at *2 (D. Nev. July 19, 2021); and 2) Plaintiffs have
 2 asked the Court to focus on the fact that Congress acted with the specific intent “to simplify
 3 trust fund collection actions” (*Rozay’s Transfer*, 791 F.2d at 773 (9th Cir. 1986)), and abolished
 4 all but two affirmative defenses from ERISA collection actions by enacting the MPPAA.
 5 *MacKillop*, 58 F.3d at 1443-44 (9th Cir. 1995).

6 Under the circumstances, the Court should find that the specific federal statute on which
 7 the Plaintiffs rely must be given effect over a general sense of “disfavor” that arises under court
 8 rules. *See HCSC-Laundry v. United States*, 450 U.S. 1, 6 (1981) (“...it is a basic principle of
 9 statutory construction that a specific statute...controls over a general provision...”); *Stewart v.*
 10 *United States*, 106 F.2d 405, 408 (9th Cir. 1939) (“...the general is not held to supersede the
 11 specific in the absence of a definite, expressed intention.”).

12 Court rules, no matter how well intentioned, must yield to federal statutes like the
 13 MPPAA. *See* 28 U.S.C. §§ 2071(a), 2072(b) (under the Rules Enabling Act, court rules “shall
 14 be consistent with the Acts of Congress” and they “shall not abridge...or modify any
 15 substantive right.”). This is yet another argument the Defendants chose to ignore in their
 16 Opposition. No amount of disfavor under a court rule can overcome the fact that 29 U.S.C. §
 17 1145 was enacted for a singular purpose and confers upon these Plaintiffs the right to present
 18 claims without regard to the defenses asserted in this Case.

19 Plaintiffs note that procedurally, the Court has two options to give effect to the
 20 MPPAA. Plaintiffs prefer to have the Motion to Strike Defenses granted under Fed. R. Civ. P.
 21 12(f)(2). But the Court may instead issue an order “on its own” under Fed. R. Civ. P. 12(f)(1)
 22 declaring that the so-called affirmative defenses listed by the Defendants are legally
 23 insufficient. *See Bd. of Trs. of the Painters & Floorcoverers Joint Comm. v. Super Structures*,
 24 No. 2:18-cv-01364-GMN-EJY, 2020 U.S. Dist. LEXIS 223000, at *13 (D. Nev. Nov. 30, 2020)
 25 (“Because Defendant’s laches claim is inapplicable as a matter of law, and the allegations in
 26 support thereof are irrelevant, the Court denies as moot Plaintiffs’ Motion to Strike.”).

1 **H. The Court should strike Defendants' jury demand.**

2 For the reasons outlined in Plaintiffs' Motion to Strike, Motion to Dismiss, and Section
3 II.A. of their Reply in Support of Motion to Dismiss, the Court should strike the jury demand.

4 **III.**

5 **CONCLUSION**

6 For the reasons stated in Plaintiffs' motion and this Reply, the Court should grant the
7 Motion to Strike Defenses or otherwise declare that all (or substantially all) of the affirmative
8 defenses listed in the Answers on file are inapplicable to the ERISA collection claims asserted
9 by the Plaintiffs.

10 Dated this 8th day of November, 2024.

11 CHRISTENSEN JAMES & MARTIN, CHTD.

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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

ELECTRONIC SERVICE: Pursuant to Local Rule LR IC 4-1 of the United States District Court for the District of Nevada, the above-referenced document was electronically filed and served on all appearing parties through the Notice of Electronic Filing automatically generated by the Court.

UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

OVERNIGHT COURIER: By depositing a true and correct copy of the above-referenced document for overnight delivery via a nationally-recognized courier, addressed to the parties listed below which was incorporated by reference and made final in the w at their last-known mailing address.

FACSIMILE: By sending the above-referenced document via facsimile to those persons listed on the attached service list at the facsimile numbers set forth thereon.

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville